



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P O Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,417	04/25/2001	Rogers C. Ritter	5236-000227	7860
7590		12/10/2008	EXAMINER	
Bryan K. Wheelock			LEACH, CRYSTAL I	
Harness, Dickey & Pierce, P.L.C.			ART UNIT	PAPER NUMBER
Suite 400			3737	
7700 Bonhomme				
St. Louis, MO 63105				
			MAIL DATE	DELIVERY MODE
			12/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/842,417

Filing Date: April 25, 2001

Appellant(s): RITTER ET AL.

Kevin M. Pumm
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 10, 2007 appealing from the Office action mailed August 9, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on August 31, 2006 has been entered.

The amendment after final rejection filed on October 12, 2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3.358.676

FREI

12-1967

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

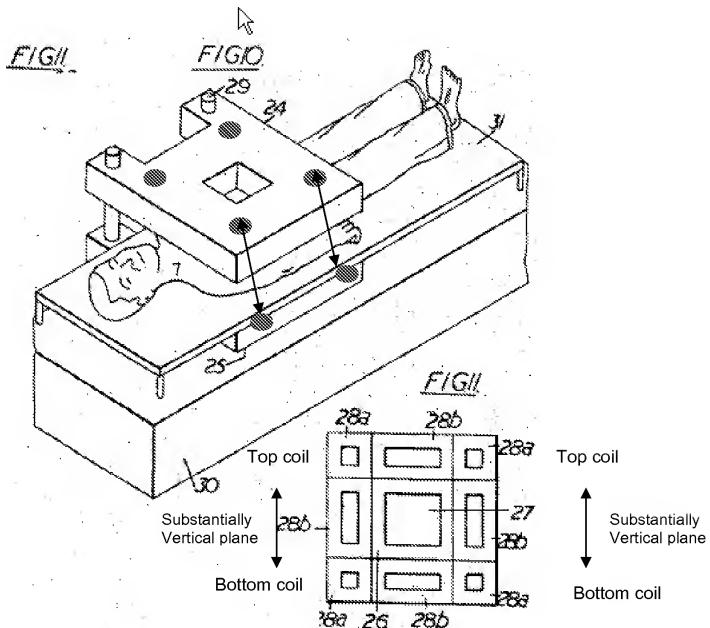
2. Claims 16, 19 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Frei, et al (US 3358676). Frei discloses an apparatus for the propulsion of an element with the use of a varying magnetic field (col 2, lines 1-26). Application of

a magnetic field causes the magnetic element to be propelled (col 3, lines 65-75). The system may be used in conjunction with an imaging device, such as x-ray (col 5, lines 47-50). The coils used may be in a variety of arrangements, as shown in the figures. In one embodiment, the coils are located on a planar support (figure 10). Coils are located at the corners of the planar support (figure 11, elements 28a). Additionally, coils may be placed on the corners of a planar support wherein the axis of at least one of the coils is not perpendicular to the plane of the planar support (figure 12). The axes of the coils converge to provide a magnetic field within the operating region. The plane of the support may be either horizontal, as shown in figure 11, or vertical, as shown in the plane made by the support structure of figure 12. The planar support is positioned at the head of the bed in the exemplary embodiments, as the element is directed through the upper region of the patient (figure 10).

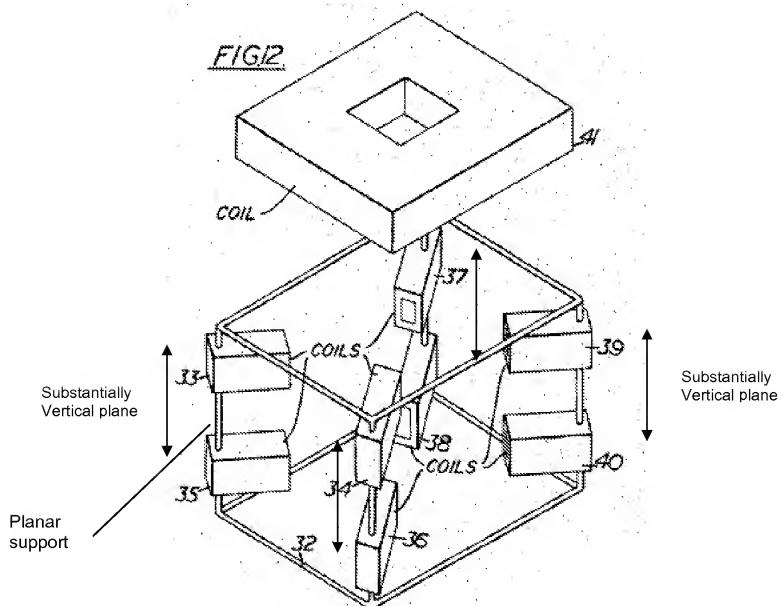
(10) Response to Argument

Regarding Appellant's arguments with respect to independent claims 16 and 19, Appellant argues that Frei does not disclose a system for orienting a magnetically responsive element of a medical device in a patient's body, which includes four coils arranged substantially in a vertical plane on a planar support positioned at the head of a patient support bed (see page 10 of Appeal Brief filed on April 10, 2007). Examiner respectfully disagrees and asserts that the disclosed invention of Frei teaches a system for orienting a magnetically responsive element of a medical device in a patient's body (see col. 2, l. 1-26). In regard to the arrangement of the four coils, Examiner asserts

that Frei also teaches four coils arranged substantially in a vertical plane on a planar support. Figures 10 and 11 of Frei, as shown below, provide four coils (ref. characters 28a or 28b) arranged substantially in a vertical plane on a planar support (ref. characters 24 or 25), whereby, for example, the coils 28a on planar support 24 lie in a vertical plane relative to the coils 28a of planar support 25. Examiner has annotated Figure 10 by placing dots on planar support (24 and 25) to denote the coils 28a which lie substantially in a vertical plane (denoted by the arrows). Examiner also asserts that the four coils lie in a substantially vertical plane on a single planar support whereby top coils 28a lie in a vertical plane with bottom coils 28a on a single planar support (24 or 25) (see annotated Figure 11 below). Frei also teaches that the planar support is positioned at the head of a patient support (31) (see Figure 10).



Additionally, considering Figure 12, Frei teaches four coils (33, 35, 39, 40) or (34, 36, 37, 38) that are arranged substantially in a vertical plane on a planar support (see the annotated figure below), whereby the rods supporting the coils are planar supports since they are supports lying within a plane. The system of Figure 12 performs diagnosis and therapy and is also provided with a patient support means (i.e. a patient support bed) that is not shown (see col. 6, l. 55-69).



(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Crystal I Leach/

Examiner, Art Unit 3737

Conferees:

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768

/Angela D Sykes/
Supervisory Patent Examiner, Art Unit 3762